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NO. 85-80

IN THE SUPREME COURT OF THE UNITED STATES

KENNETH HOOVER, ALBERT GUYTON, and ALEX GUYER, for themselves and the certified class,

Respondents

vs.

THE CUMBERLAND-MARYLAND AREA TEAMSTERS PENSION FUND, JOSEPH FRENO, JAMES HUTCHINSON, WILLIAM PETERSON, and WILLIAM LEMON, Trustees of the Cumberland-Maryland Area Teamsters Pension Fund,

Petitioners

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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STATEMENT OF THE CASE

This is a class action on behalf of approximately 188 former participants, brought against the Cumberland-Maryland Area Teamsters Pension Fund (Cumberland Fund) which in 1978 had reduced the pension benefits of these participants by nearly 75 percent.

In the late 1960s, the class members' employers relocated their trucking terminals from Bedford, Pennsylvania, to Pittsburgh, Pennsylvania; and the class then became participants in the Western Pennsylvania Teamster and Employer Pension Fund.

At about the same time, various teamster industry pension funds throughout the nation, including the Cumberland Fund, became parties to a

"reciprocal agreement" among those funds. Under the reciprocal agreement, individuals transferring from one signatory fund to another can cumulate pension credits with each fund. If an individual's combined service credit is sufficient, he or she can receive a partial pension benefit from each fund. The reciprocal agreement itself does not set benefit levels, but under its terms, each fund is responsible for its proportional share of the normal benefit the participant would have received from that fund if all the participant's service credits were from that fund.

In 1969, after signing the reciprocal agreement, the Cumberland Fund trustees amended the plan and provided that partial pensions, including those of respondents, would be calculated by use

of the unit multiplier in effect when individuals terminated their participation with the plan. For the bulk of the class members, under the 1969 amendments, the applicable unit multiplier was $6.00 a month for each year of service credit earned with the Cumberland Fund.

In 1972, the trustees again amended the plan to provide that partial pension benefits would be calculated by use of the unit multiplier in effect at the time of the retirement of the individual involved. In 1972, the year some class members first retired, that multiplier was $24.00 a month for each year of service credit with the Cumberland Fund.

In 1979, the Cumberland Fund trustees amended the plan once again,

this time to provide that partial pension benefits would be calculated using the unit multiplier in effect at the time individuals terminated their participation with the Fund. All individuals retiring after the amendment, which was made retroactive to January 1, 1978, would receive partial pension benefits calculated based on the unit multiplier in effect in 1967, or $6.00 a month for each year of service credit, rather than at the highest rate of $24.00 a month for each year of service credit.

The Cumberland Fund never applied to the Secretary of the Treasury, pursuant to section 302(c) of ERISA, for a waiver of ERISA's prohibition on reducing accrued benefits. Such waivers may be granted to funds experiencing financial hardship.

The issue presented in this case is whether the Third Circuit erred in holding that the Cumberland Fund's 1979 reduction in the class members' partial pension benefits violated section 204(g) of ERISA, which prohibits reductions in accrued benefits.

SUMMARY OF THE ARGUMENT

This case does not present an issue of exceptional general importance, does not prevent pension funds from reducing benefits upon proper and timely application to the Secretary of the Treasury, and perfectly harmonizes with the position of the Secretary of Treasury and all the Courts of Appeals which have previously addressed the same or similar issues.

REASONS FOR DENYING PETITION

1. The Third Circuit's opinion does not prevent financially pressed funds from adjusting benefit levels, because such funds can already apply to the Secretary of the Treasury pursuant to ERISA Section 302(c) for an exemption from the provisions of ERISA Section 204(g).

Contrary to what petitioners assert, Congress has already provided that in appropriate cases, financially pressed pension funds may avoid the restrictions of ERISA Section 204(g) which prohibits the reduction of accrued benefits. Such funds need only make a timely application to the Secretary of Treasury pursuant to ERISA Section 302(c) for a waiver from the provisions of ERISA Section 204(g). The Cumberland Fund did not seek such a waiver but acted unilaterally. The opinion of the Third

Circuit, therefore, will not preclude financially pressed funds from reducing benefit levels or accrued benefits in appropriate circumstances. As the Court noted below:

> "Rather than comply with this procedure, the trustees unilaterally effected a retroactive elimination of a benefit increase adopted six years earlier. In neglecting to avail themselves of Section 302(c)(8), defendants cannot now complain of their financial straits."

The picture of financial woe and upheaval painted by petitioners is an attempt to cover petitioners' own refusal to use the existing mechanism designed by Congress to allow hard-pressed funds to adapt to unexpected fluctuations in membership and financial reserves. Furthermore, the Cumberland Fund's reduction was far more drastic than ERISA Section 204(g) would have permitted.

2. The Third Circuit's opinion is in harmony with the Internal Revenue Service interpretation of the tax code provision which parallels Section 204(g) of ERISA.

In the court below, the Internal Revenue Service (IRS) filed a brief as amicus curiae in full support of the respondents and against the position of the petitioner Cumberland Fund. The Third Circuit's holding that respondents' benefits were accrued benefits subject to Section 204(g) follows the position of the IRS in its amicus brief below. The Court of Appeals opinion, then, perfectly reflects the position of the IRS under the parallel provision of the Internal Revenue Code, Section 411(d).

3. The opinion of the Third Circuit Court of Appeals in this case does not conflict with that of any other Court of Appeals and conforms with that of the Ninth Circuit Court of Appeals in Shaw v. International Association of Machinists and Aerospace Workers Pension Plan, 750 F.2d 1458 (CA 9, 1984), cert. denied, 53 U.S.L.W. 3852 (June 3, 1985).

The Third Circuit Court of Appeals construed ERISA Section 204(g) consistently with the Ninth Circuit's reading of that same section in Shaw v. IAM, 750 F.2d 1458 (CA 9 1984), cert. denied, 53 U.S.L.W. 3852 (June 3, 1985). The decision of the Third Circuit does not conflict with that of any other Circuit nor with any decision of this Court. See Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 501 (1981) and Nachman Corporation v. Pension

Benefit Guaranty Corporation, 446 U.S. 359 (1980).

The Third Circuit held that respondents' partial pension benefits were "accrued" benefits within the meaning of Section 204(g) which the Fund could not retroactively reduce. In making this determination, the Third Circuit applied the same standard criteria used by all the other appellate courts which have considered the issue. The Court reasoned that respondents' benefits were "accrued" rather than "ancillary" benefits, subject to Section 204(g) for three reasons. First, the benefits in this case were annual benefits payable at normal retirement age. See Sutton v. Weirton Steel Division of National Steel Corporation, 724 F2d 406 (CA 4, 1983) cert. denied,

104 S.Ct. 2387 (1984)(severance and pre-retirement benefits not accrued benefits). Second, the benefits in this case served the exclusive function of providing retirement income. Third, unlike health and welfare benefits, the reciprocal pension benefits in this case were "accruable", that is, capable of being earned and transferred from one employer to another, and therefore the type of benefits to which section 204(g) was intended to apply.

There is no conflict or even tension between the decision of the Third Circuit below and those of the Fourth and Ninth Circuits requiring resolution of this Court. In Shaw, supra, in which this Court recently denied certiorari, the Ninth Circuit concluded that a "living pension" benefit in which

pensioners' benefits were tied to the current salaries of the jobs from which they had retired were "accrued benefits" subject to the protection of Section 204(g). As in this case, the Ninth Circuit reasoned that the living pension benefit provided retirement income, was not generally transferable from one employer to another, and was not in the nature of an early retirement benefit.

The Supreme Court's holdings in Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981) and Nachman Corporation v. Pension Benefit Guaranty Corporation, 446 U.S. 359 (1980) are also not in conflict. As the Circuit Court observed, those cases involved different sections of ERISA and consideration of specific pension offsets which Congress

expressly declined to prohibit. In this case, by contrast, Congress expressly prohibited the benefit reductions at issue.

4. The Third Circuit's opinion considered a version of Section 204(g) which has since been superseded by Congressional amendment.

In 1984, Congress passed new amended versions of Section 204(g) and its parallel Internal Revenue Code provision, Section 411(d). The Third Circuit did not base its decision upon the amended sections because the challenged reduction predated them. The amended sections codified existing IRS rulings, and equally would prohibit the action that petitioners took to reduce the partial pensions protected by the former version of Section 204(g).

In the future, courts reviewing similar benefit-reduction cases will be interpreting the new amended sections, not those analyzed by the Third Circuit in this case. Although the petitioners' reduction would be prohibited under the amended sections as well, as pointed out above, it is not an efficient use of the Court's resources to grant certoriari to review the Third Circuit's construction of a now superseded statute.

Conclusion

The Petition for Certiorari should be denied.

Respectfully submitted

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